Lynawati bt Abdullah v Abang Sukori bin Abang Hj Gobil

COURT OF APPEAL (KUCHING) — CIVIL APPEAL NO Q-01–203–05 OF 2013
MOHD HISHAMUDIN YUNUS, DAVID WONG AND UMI KALTHUM JJCA
29 JULY 2015

Civil Procedure — Jurisdiction — Court — High Court — Decision by Native Court of Appeal of Sarawak — Whether decision of Native Court of Appeal amenable to judicial review by High Court

Native Law and Custom — Land dispute — Ownership of native customary rights land — Dispute over — Decision by Native Court of Appeal of Sarawak that appellant as non-native had no locus in action before Native Courts — Application for leave to apply for judicial review of decision of Native Court of Appeal — Whether decision of Native Court of Appeal amenable to judicial review by High Court

The appellant, who converted to Islam after her marriage to a Sarawak Malay, was involved in a dispute with the first respondent over the ownership of six parcels of native customary rights land situated in Kuching ('the disputed land'). The appellant claimed that she had acquired the disputed land from the original Malay owners based on the custom of serah (transfer) on payment of sagu hati or compensation. The disputed land had been acquired by the Government of Sarawak for the purpose of building a public road and the rightful owner of the disputed land was entitled to compensation from the government. Both the appellant and first respondent claimed that they were entitled to the compensation from the government. The dispute between the appellant and the first respondent over the ownership of land had culminated in a series of proceedings in the Native Courts. At first there was the trial before the Chief's Court, Kuching, which decided in favour of the appellant. The first respondent's appeal to the Chief's Superior Court in Kuching was also dismissed. However, the first respondent further appealed to the District Native Court, Kuching, which decided in his favour. The District Native Court held that the appellant was not a native of Sarawak at the time when she acquired the disputed land and that thus she had no locus in any action before a Native Court. The appellant appealed to the Resident's Native Court but her appeal was dismissed and the decision of the District Native Court was upheld. The appellant then appealed to the Native Court of Appeal in Kuching but her appeal was dismissed. The aggrieved appellant then applied to the High Court of Kuching for leave to file a judicial review application pursuant to O 53 of the

Rules of Court 2012 with a view to obtaining an order of certiorari to quash the decision of the Native Court of Appeal. The High Court of Kuching refused to grant leave to the appellant to apply for judicial review by ruling that a decision of the Native Court of Appeal was not amenable to judicial review. Hence the present appeal by the appellant. The appellant relied on the decision of the Supreme Court in the case of *Haji Laugan Tarki bin Mohd Noor v Mahkamah Anak Negeri Penampang* (the *Haji Laugan* case) to submit that the High Court had jurisdiction to grant an order of certiorari over all inferior tribunals. The respondents submitted that the decision of the Native Court of Appeal was not amenable to judicial review.

Held, allowing the appeal with no order as to costs:

(1) The principle as laid down in the *Haji Laugan* case was preferred. The reasons given by the High Court for not following the *Haji Laugan* case, were not sufficiently persuasive (see para 30).

(2) The Native Courts of Sarawak were established by the state law of Sarawak and were like the Native Courts of Sabah vis-à-vis the High Court of Sabah and Sarawak. Thus, like other inferior tribunals the High Court could exercise control over the Native Courts through the prerogative orders. Therefore, the decision of the Native Court of Appeal of Sarawak was amenable to judicial review by the High Court (see para 30).

(3) As such, the present case ought to be remitted to the High Court so that the appellant's leave application could be heard on the merits (see para 31).

[Bahasa Malaysia summary

Perayu, yang memeluk agama Islam selepas perkahwinannya dengan orang Melayu Sarawak, terlibat dalam pertikaian dengan responden pertama ke atas milikan enam bidang tanah hak adat anak negeri yang terletak di Kuching (tanah yang dipertikaikan). Perayu mendakwa yang dia telah memperoleh tanah yang dipertikaikan daripada pemilik-pemilik Melayu asal berdasarkan adat serah (pemindahan) atas bayaran sagu hati atau pampasan. Tanah yang dipertikaikan telah diambil alih oleh Kerajaan Sarawak bagi tujuan membina jalan awam dan pemilik sah tanah yang dipertikaikan tersebut berhak kepada pampasan daripada kerajaan. Kedua-dua perayu dan responden pertama mendakwa bahawa mereka berhak kepada pampasan daripada kerajaan. Pertikaian di antara perayu dan responden pertama ke atas milikan tanah tersebut telah berakhir dengan prosiding berturut-turut di Mahkamah Anak Negeri. Pada mulanya terdapat perbicaraan di hadapan Ketua Mahkamah, Kuching, yang memutuskan dengan memihak kepada perayu. Rayuan responden pertama kepada Ketua Mahkamah Tinggi di Kuching juga ditolak. Walau bagaimanapun, responden pertama selanjutnya merayu kepada

Mahkamah Anak Negeri Daerah, Kuching, yang mana memutuskan memihak kepadanya. Mahkamah Anak Negeri Daerah memutuskan bahawa perayu bukan anak negeri Sarawak pada masa dia memperoleh tanah yang dipertikaiakan tersebut dan oleh itu dia tidak mempunyai lokus dalam mana-mana tindakan di hadapan Mahkamah Anak Negeri. Perayu merayu kepada Residen Mahkamah Anak Negeri tetapi rayuannya ditolak dan keputusan Mahkamah Anak Negeri Daerah disahkan. Perayu kemudiannya merayu kepada Mahkamah Anak Negeri Rayuan di Kuching tetapi rayuan ditolak. Perayu yang tidak berpuas hati kemudiannya memohon kepada Mahkamah Tinggi Kuching untuk izin memfailkan permohonan semakan kehakiman berikutan A 53 Kaedah-Kaedah Mahkamah 2012 dengan pandangan untuk mendapatkan perintah certiorari bagi membatalkan keputusan Mahkamah Anak Negeri Rayuan. Mahkamah Tinggi Kuching menolak daripada memberikan izin kepada perayu untuk memohon semakan kehakiman dengan memutuskan bahawa keputusan Mahkamah Anak Negeri Rayuan tidak bersetuju kepada semakan kehakiman. Maka, rayuan ini oleh perayu. Perayu bergantung ke atas keputusan Mahkamah Agung dalam kes *Haji Laugan Tarki bin Mohd Noor v Mahkamah Anak Negeri Penampang* (kes *Hj Laugan*) untuk menghujahkan bahawa Mahkamah Tinggi mempunyai bidang kuasa untuk memberikan certiorari ke atas kesemua tribunal rendah. Responden-responden berhujah bahawa keputusan Mahkamah Anak Negeri Rayuan tidak bersetuju kepada semakan kehakiman.

Diputuskan, membenarkan rayuan tanpa perintah kepada kos:

(1) Prinsip yang ditetapkan dalam kes *Hj Laugan* dirujuk. Alasan-alasan yang diberikan oleh Mahkamah Tinggi untuk kerana tidak mengikut kes *Hj Laugan* tidak menyakinkan secukupnya (lihat perenggan 30).

(2) Mahkamah Anak Negeri Sarawak ditubuhkan oleh undang-undang negeri Sarawak dan seperti Mahkamah Anak Negeri Sabah berbanding dengan Mahkamah Tinggi Sabah dan Sarawak. Oleh itu, seperti tribunal rendah yang lain Mahkamah Tinggi boleh menjalankan kawalan ke atas Mahkamah Anak Negeri melalui perintah-perintah prerogatif. Oleh itu, keputusan Mahkamah Anak Negeri Rayuan Sarawak bersetuju kepada semakan kehakiman oleh Mahkamah Tinggi (lihat perenggan 31).

(3) Oleh itu, kes ini patut diremitkan kepada Mahkamah Tinggi dengan itu permohoan izin perayu boleh didengar atas merit (lihat perenggan 31).]]]

Notes

For cases on court, see 2(3) *Mallal's Digest* (5th Ed, 2015) paras 5663–5675.

Cases referred to

Haji Laugan Tarki bin Mohd Noor v Mahkamah Anak Negeri Penampang [1988] 2 MLJ 85, SC (folld)

A *Ongkong anak Salleh v David Panggau Sandin & Anor* [1983] 2 MLJ 419, HC (refd)

Legislation referred to

Federal Constitution
B Native Courts (Criminal Jurisdiction) Act 1991
Native Courts Ordinance 1992 s 20
Penal Code
Specific Relief Act 1950 s 44(1)
Rules of Court 2012 O 53
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Appeal from: Judicial Review Application No KCH-13JR-13–11 of 2012 (High Court, Kuching).

Simon Siah Sy Jen (Chua Kuan Ching with him) (Baru Bian & Co) for the appellant.
D *Nur Azhar bin Bujang (Mcwillyn Jiok with him) (State Legal Officers, State Attorney General's Chambers) for the respondents.*

Mohd Hishamudin Yunus JCA:
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INTRODUCTION

[1] This appeal deals with this question: whether a decision of the Native Court of Appeal of Sarawak is amenable to judicial review by the High Court?
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[2] The High Court of Sabah and Sarawak at Kuching ('the High Court of Kuching'), on 15 April 2013, agreeing with the respondents' submission before it, answered this question in the negative and refused to grant leave to the appellant to file an application for judicial review.
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[3] In refusing to grant leave, the High Court did not hear the leave application on the merits. The High Court merely ruled that it had no jurisdiction to hear the ex parte application on the ground that the decision of the Native Court of Appeal was not amenable to judicial review by the High Court.
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[4] Hence the present appeal to this court by the appellant.

I **[5]** On 17 April 2015, after hearing submissions, we unanimously allowed the appeal, but with no order as to costs.

[6] In allowing the appeal, we ruled that a decision of the Native Court of Appeal is amenable to judicial review by the High Court.

[7] We now give our reasons for so holding.

FACTS OF THE CASE

[8] The appellant, Lynawati bt Abdullah, is of mixed parentage: her father is Chinese, and her mother, a Bidayuh. On 24 January 1983 she married a Sarawak Malay, one Jalal bin Mohi. Upon marriage, she converted to Islam. She faithfully practised the Islamic faith, observed Malay customs and speak Malay. The appellant thereafter applied to the District Native Court under s 20 of the Native Courts Ordinance 1992 of Sarawak for a determination that she is a Native Malay of Sarawak. She succeeded in her application. Her status as a Native Malay of Sarawak was published in the Sarawak Government *Gazette* Vol LX No 29 on 21 July 2005 vide *Gazette* Notification No 2279.

[9] The appellant is involved in a dispute with the first respondent, Abang Sukori bin Abang Hj Gobil, over the ownership of six parcels of native customary rights land situated in Kuching North Land District ('the disputed parcels of land').

[10] The disputed parcels of land had been acquired by the State Government of Sarawak for the purpose of building a public road. Whoever was the rightful owner of the disputed parcels of land is entitled to compensation from the State Government. Both the appellant and the first respondent claim ownership over the disputed parcels of land. Both are claiming compensation.

[11] The appellant claims that she had acquired the disputed parcels of land from their original Malay owners based on the custom of serah (that is, transfer) on payment of *sagu hati* (that is, compensation).

[12] The dispute between the appellant and the first respondent over the ownership of the disputed parcels of land culminated in aseries of proceedings in the Native Courts. First, there was the trial before the Chief's Court, Kuching. The Chief's Court decided in favour of the appellant.

[13] The first respondent, dissatisfied with the decision of the Chief's Court, appealed to the Chief's Superior Court, at Kuching. But his appeal was dismissed.

[14] Still dissatisfied, the first respondent took the matter further by appealing to the District Native Court, Kuching. The District Native Court allowed his appeal and overturned the decisions of the Chief's Court and the Chief 's Superior Court.

[15] In allowing the first respondent's appeal, the District Native Court held that the appellant was not a native of Sarawak ('a non-native') at the time when she acquired the disputed parcels of land in the year 2000, as she was *gazetted* as a native Malay of Sarawak only on 21 July 2005; and thus she had no locus in any action before a Native Court. The District Native Court declared the proceedings before the Chief's Court and the Chief's Superior Chief's Court null and void.

[16] Dissatisfied with the decision of the District Native Court, the appellant appealed to the Resident's Native Court at Kuching. The Resident's Native Court dismissed her appeal and upheld the decision of the District Native Court that the appellant was a non-native and that the first respondent was the rightful owner of the disputed parcels of land.

[17] The appellant then appealed to the Native Court of Appeal at Kuching, but her appeal was dismissed.

[18] Thereafter, being aggrieved by the decision of the Native Court of Appeal,in dismissing her appeal, the appellant applied ex parte to the High Court of Kuching for leave to file a judicial review application pursuant to O 53 of the Rules of Court 2012 with a view to obtaining an order of certiorari to quash the decision of the Native Court of Appeal.

[19] Several grounds were advanced by the appellant in her judicial review application, one of which is that the Native Court of Appeal erred in law in holding that she was a non-native. But we are not concerned with the merits of the judicial review application for the purpose of this appeal.

[20] Although the application was ex parte, the learned High Court judge, taking the view that the matter raised a 'novel and interesting point of law', on her own volition, directed that the application be served on the respondents; and the latter were invited to make submissions. The state legal officer on behalf of the respondents did submit before the High Court.

[21] The High Court of Kuching, having heard parties,refused to grant leave to the appellant to apply for judicial review, ruling that a decision of the Native Court of Appeal is not amenable to judicial review.

THE STRUCTURE OF NATIVE COURTS IN SARAWAK

[22] In a nutshell, in Sarawak, in addition to the Civil Courts and the Syariah Courts, there are the Native Courts. The Native Courts comprise of six tiers, namely:

(a) Native Court of Appeal (the highest in the hierarchy);

(b) Resident's Native Court;

(c) District Native Court;

(d) Chief's Superior Court;

(e) Chief's Court; and

(f) Headman's Court (the lowest in the hierarchy).

[23] The Native Courts deal with:

(a) cases arising from a breach of native law or custom where all the parties are subject to the same native system of personal law;

(b) cases arising from a breach of native law or customrelating to any religious, matrimonial or sexual matter where one party is a native; and

(c) other cases where jurisdiction is conferred upon the Native Courts by written law.

[24] However,the administration of the native law and custom in Sarawak by the Native Courts is subject to certain restrictions. The law provides that the Native Courts have no jurisdiction in respect of any cause or matter that falls within the jurisdiction of the Syariah Courts or the Civil Courts. With regard to criminal offences, the power to impose punishment is restricted by a federal law: the Native Courts (Criminal Jurisdiction) Act 1991 ('the Act'). The Act only confers jurisdiction on the Native Courts of Sabah and Sarawak to try any offence (relating to native law and custom) punishable with a term of imprisonment not exceeding two years or with a fine not exceeding RM5,000 or a combination of both. The Act further provides that criminal jurisdiction cannot be exercised by the Native Courts in respect of an offence which is also an offence under the Penal Code.

[25] The Sarawak Native Courts Ordinance, 1992 provides for the structure of the Native Courts system of Sarawak. The relevant provisions are as follows:

Courts to which appeal lies

13 (1) An appeal shall lie—

(a) from the Headman's Court to the Chief's Court;

(b) from the Chief's Court to the Chief's Superior Court:

Provided that the decision of the Chief's Superior Court in respect of all matters under section 5 (except land disputes under section 5(3)) shall be final and conclusive and shall not be a subject of appeal to the District Native Court or Resident's Native Court or Native Court of Appeal;

(c) subject to subsection (2), from the Chief's Superior Court to the District Native Court;

(d) from the District Native Court to the Resident's Native Court which shall be constituted by a person for the time being holding or acting in the office of Resident of a Division sitting with not less than two but not more than four assessors who shall be persons whom the Resident has reason to believe are versed in the customary law relevant to the determination of the appeal:

Provided that for the purpose of the speedy despatch of the business of the Resident's Native Court, the Yang Di-Pertua Negeri may appoint any person who has held office as Resident in the State, or such person as he may deem fit or proper to preside in the Resident's Native Court; and the person so appointed may exercise all or any of the powers conferred on a Resident by this Ordinance;

(e) from the Resident's Native Court, by way of petition for revision to the Native Court of Appeal constituted by subsection (3).

(2) No appeal shall lie to the District Native Court from the decision of any lower court in any cause or matter where the judgment or order relates to any case referred to in section 5(1) and (2).

(3)(a) There shall be a Native Court of Appeal which shall consist of—

(i) a President, who shall be appointed by the Yang di-Pertua Negeri;

(ii) the President of the Majlis Islam or the Ketua Majlis of Majlis Adat Istiadat Sarawak;

(iii) any person who is or has been appointed a Temenggong and nominated by the President in consultation with the Chief Registrar, to sit in connection with the hearing of any particular appeal:

Provided that where any of the persons specified in subparagraph (ii) is not able to sit as a member of the Native Court of Appeal in any particular case, the President shall, after consultation with the Chief Registrar, nominate a Temenggong to replace him.

(b) No person shall be appointed to preside over a Native Court of Appeal unless he is holding or has held the office of a Judge of the High Court or is qualified under the Federal Constitution to be appointed as a Judge of the High Court.

(c) The President of the Native Court of Appeal may be appointed for such period as may be stipulated in the instrument of appointment and may be paid such remuneration and allowance as may be determined by the Yang di-Pertua Negeri: Provided that no person shall be so appointed for a period exceeding three years but he is eligible for re-appointment.

(d) roceedings before a Native Court of Appeal may be regulated by rules made by the Yang di-Pertua Negeri under section 29.

(e) The Native Court of Appeal shall have jurisdiction to hear and determine all

appeal cases which are still pending before such Court, including those cases filed after the 1st day of June, 1993.

(4) Any person appointed to preside in a Resident's Native Court under the proviso to subsection (1)(d) or in a Native Court of Appeal under paragraph (a) of the proviso to subsection (3) shall be paid such remuneration and allowances as may be prescribed by rules made under section 29.

Power of the appellate court

14 (1) The appellate court may—

(a) dismiss the appeal;

(b) hear the case itself or order the case to be heard by any lower court;

(c) hear further evidence, or order the court of first instance, or any other Native Court having jurisdiction, to hear further evidence;

(d) order a re-trial;

(e) set aside, reverse, amend or vary the decision of the lower court, however, the decision as altered shall not be in excess of the jurisdiction of the court of first instance; or

(f) make such other order as it may deem just.

(2) Sections 23 and 24 shall apply to a Resident's Native Court but shall not apply to the Native Court of Appeal which shall, in respect of all such matters, have the same powers as may from time to time be vested in the High Court.

THE APPELLANT'S SUBMISSION

[26] Mr Simon Siah, learned counsel for the appellant, submits before us that a decision of the Native Court of Appeal is amenable to judicial review based on the decision of the Supreme Court in *Haji Laugan Tarki bin Mohd Noor v Mahkamah Anak Negeri Penampang* [1988] 2 MLJ 85. In this case Hashim Yeop A Sani SCJ (as he then was), delivering the unanimous decision of the Supreme Court (the other two members of the panel comprising Salleh Abas LP and Seah SCJ), held:

The underlying principle should always be remembered that the jurisdiction of the High Court to grant an order of certiorari is supervisory in character and is exercisable over all inferior tribunals. The Native Courts are creature of statute and the High Court can exercise control over the Native Courts through the prerogative orders. Also as Hickling said in his book Malaysian Law at p 70:

> Such a control is important, since it is essential to have one supreme authority in any field of human activity. As English history illustrates, two systems of courts with parallel authority cannot exist together in harmony.

A THE RESPONDENTS' SUBMISSION

[27] The learned state legal officer, Encik Nur Azhar bin Bujang, on behalf of the respondents, on the other hand, submits that the decision of the Native Court of Appeal is not amenable to judicial review. He relies on the High Court case of *Ongkong anak Salleh v David Panggau Sandin & Anor* [1983] 2 MLJ 419. In this case cited, Seah J (as he then was; interestingly, five years later His Lordships at as a Supreme Court judge in *Haji Laugan Tarki*) held:

> The Native Courts are purely a creature of statute, viz the Native Courts Ordinance (Cap 43); their jurisdiction is clearly defined by the legislature and the powers of the courts are strictly limited. In short, the Native Courts including the District Native Court are statutory courts established not by federal law but by Sarawak State law. They administer a system of laws entirely different from that of the High Court and the subordinate courts in Sarawak. There is no right of appeal from a decision of the District Native Court to the High Court but under s 8(1)(c) of the Native Courts Ordinance an appeal lay to the Resident's Native Court which shall be constituted by a person for the time being holding or acting in the office of resident of a division sitting with a Native Officer or Chief and two assessors, being persons whom the Resident has reason to believe are versed in the customary law relevant to the determination of the appeal. Subject to sub-ss (3) and (4) thereof an appeal by way of case stated on a point of law or native custom lay from the Resident's Native Court to the Native Court of Appeal presided by a Judge of the High Court nominated by the Yang di-Pertua Negeri.
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> The phrase 'any court subordinate to the High Court' contained in s 44(1) of the Specific Relief Act 1950 is of course different from the expression 'subordinate court' as defined in s 3 of the Courts of Judicature Act 1964. In my opinion, a court cannot be said to be subordinate to the High Court unless the High Court exercises supervisory power over it. Moreover, the District Native Court is constituted under the Native Courts Ordinance (Cap 43) a state law enacted by the legislature of Sarawak and the High Court has no supervisory power over it. Besides, an appeal from a decision of the District Native Court does not lie to the High Court but to the Resident's Native Court.
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> For the above reasons I am inclined to agree with the submission of the learned Assistant Attorney-General of Sarawak that the High Court has no jurisdiction to entertain this motion of the applicant. I therefore dismiss the notice of motion with costs to the 1st respondent only to be taxed. I make no order for costs in favour of the 2nd respondent.

DECISION OF THE HIGH COURT

[28] In holding that the decision of the Native Court of Appeal is not amenable to judicial review by the High Court, the learned High Court judge opined:

> Secondly, the constitution of the Native Court of Appeal under the Sabah Enactment has made it on par with the High Court for it provides that a Judge of

the High Court or a person appointed to perform the functions of one sits in it and he is assisted by two District Chiefs or Native Chiefs. In Sarawak, there is only a slight difference to the constitution of the Native Court of Appeal in that its President is not only a High Court Judge but one who has held or is qualified under the Federal Constitution to be appointed as a High Court Judge (see s 13(3)(b) of the Native Courts Ordinance, 1992). Given the constitutions of the Native Court of Appeal in both States, these appellate courts are not 'inferior courts' upon which the High Court could exercise its supervisory power under judicial review. Granted that the subordinate Native Courts are inferior courts, it would surely defeat the very purpose of having a Native Court of Appeal if every dissatisfied native litigant at the subordinate court level could run to the High Court for judicial review. It would even render its function otiose if this is allowed and laws clearly must never be legislated in vain.

Thirdly, a comparison can be drawn between the Native Court of Appeals in both states to the Election Court established under the Election Offences Act 1954. An election judge is specified in s 33 of that legislation as the Chief Judge or a High Court Judge nominated by him for that purpose. The courts have been consistent in their view that a decision of an Election Judge is not amenable to judicial review by the High Court (see, for instance, the decision of the Court of Appeal in *Yong Teck Lee v Harris Mohd Salleh & Ors* [2002] 3 MLJ 230 and for which leave to appeal to the Federal Court was refused). This [is] on account that it is presided by a Judge of co-ordinate jurisdiction with the High Court and is therefore not an inferior court. This same reasoning, in my view can be raised for the Native Court of Appeal.

Conclusion

The Supreme Court in *Haji Laugan*'s case quoted p 70 of Hickling's book, Malaysian Law in which the learned author justified the control of the High Court over Native Courts by saying that such a control is important since it is essential to have one supreme authority in any field of human activity. As English history illustrates, continues the learned author, two systems of courts with parallel authority cannot exist together in harmony. It is an opinion which I respectfully beg to differ. In my view, it is disrespect and meddling in each other's jurisdiction which would bring disharmony, not the mere existence of another system of courts because each court system is administering laws peculiar to itself which, with respect, the other is not well-versed in or trained. Thus, when the laws are properly legislated to define the constitution, powers and jurisdictions of each court system and mutual respect is accorded by one to the other, all three can co-exist and operate within their own spheres of influence under the judicial landscape of our country. I would sum up by stating that the application for leave is dismissed with cost which has been agreed at RM500.00.

[29] On *Haji Laugan*, the learned High Court judge, in deciding not to follow the decision of that case, said:

The grave concerns expressed by the Supreme Court which formed, in my respectful view, the bedrock of its decision, have been addressed by the repeal of the Sabah Native Courts Ordinance in 1993 [came into force on 1 April 1993. In its place now is the Sabah Native Courts Enactment of 1992 which has a

comprehensive and clear provisions on the breaches of customary law together with their prescribed penalties. What is more under section 11 of the Enactment, a sentence of imprisonment imposed by a Native Court must be endorsed by a Magistrate. The law, in other words, have moved with time and when *Haji Laugan*'s case is viewed against this development in the law, its ratio can no longer be applied.

DECISION OF THIS COURT

[30] In our judgment, we prefer the principle as laid down by the Supreme Court in *Haji Laugan Tarki*. With respect, we are not persuaded by the reasons given by the learned High Court judge for not following *Haji Laugan Tarki*. The Native Courts of Sarawak are established by the State law of Sarawak (the legislation enacted pursuant to Item 13 of List IIA for the State List for Sabah and Sarawak of the Ninth Schedule of the Federal Constitution). They are, like the Native Courts of Sabah, vis a vis the High Court of Sabah and Sarawak, inferior tribunals. And like other inferior tribunals, the High Court may exercise control over the Native Courts through the prerogative orders. We, therefore, hold that the decision of the Native Court of Appeal of Sarawak is amenable to judicial review by the High Court.

[31] Accordingly, we allow the appeal but with no order as to costs. The order of the High Court is set aside. The matter is remitted to the High Court for the High Court to hear the appellant's leave application on the merits.

Appeal allowed with no order as to costs.

Reported by Kohila Nesan